THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION Nos.3293, 3057 and 3956 of 1995

DATED: 07-03-2006

W.P.No.3293 of 1995

Between:

M/s.Kesoram Cement . . .Petitioner

And

APSEB, Hyderabad and another . . .Respondents

W.P.No.3057 of 1995

Between:

M/s.Vinayak Steel Ltd . . .Petitioner

And

APSEB, Hyderabad and another . . .Respondents

W.P.No.3956 of 1995

Between:

Madras Cements Ltd . . .Petitioner

And

APSEB, Hyderabad and another . . .Respondents

THE HON'BLE SRI JUSTICE A.GOPAL REDDY

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WRIT PETITION Nos.3293, 3057 and 3956 of 1995

COMMON ORDER:

Since the issue involved in all these writ petitions is one and the same, they are heard together and being disposed of by a common order.

The petitioners, who have entered into H.T. agreements for supply of electrical energy for a contracted Maximum Demand of
21000 KVA, 3530 KVA and 16500 KVA respectively, filed these writ petitions to declare B.P.Ms.No.644, dated 12-01-1995, computing the Fuel Cost Adjustment charges for the year 1993-94 as arbitrary and illegal and consequently, to determine the liability of Fuel Cost Adjustment Charges.

It is the case of the petitioners that while notifying tariffs in B.P.Ms.No.147, dated 18-11-1992, the Andhra Pradesh State Electricity Board (for short "the Board") had taken the average price as basic cost of Coal at Rs.637/- per Metric Ton and Fuel Oil at Rs.5,972/- per KL. As per the tariffs notified by the Board in the above B.P.Ms., the Fuel Cost Adjustment Charges, which are collected as per formula, will be revised on actual consumption of coal and oil and final adjustments either for shortfall or excess will be made in the consumption month of October. Subsequent to the notification of the tariffs, the Board notified the Fuel Cost Adjustment Charges at Rs.7.48 ps. per unit with effect from
01-04-1993, which was increased to Rs.9.35 ps per unit from the consumption month of July, 1993. Through B.P.Ms.No.644, dated 12-01-1995, the Board decided to levy additional Fuel Cost Adjustment Charges of Rs.1.55 ps per unit on the total

energy consumed during 1993-94. Accordingly, the 2nd respondent raised a demand of Rs.13,80,094-38 calling upon the petitioners to pay the same. Questioning the said notification and the demand, the petitioners filed the present writ petitions.

According to the petitioners, the accounts of the Board have been published by it for the financial year 1993-94 and the same were certified by the statutory authorities. The work sheet attached to B.P.Ms.No.644, dated 12-01-1995, furnished certain particulars such as actual consumption of Coal, Oil and the quantum of energy attracting Fuel Cost Adjustment Charges etc., and the said figures tally with the annual accounts of the Board. But the figures relating to the increased cost of Coal and Oil do not match with the figures published by it and the same do not reflect the actual increased cost.

It is stated that the total quantity of Coal used was 82,73,000 MT and the actual cost incurred was Rs.571,53,75,064/-. The actual average cost worked out to Rs.691/MT as against the base price of Rs.637/MT and the increase in average cost was Rs.54/MT but as per the calculation sheet, it was Rs.96.23/MT.

Similarly, the total quantity of Oil used was 27,802 KL and the actual cost incurred was Rs.16,92,56,886/-. The average cost worked out to Rs.6088/KL and the base rate as per the tariff was at Rs.5,972/KL resulting in increase in the average cost by Rs.116/KL as against which, it was claimed Rs.54.54/KL.

It is evident from the above figures that the Board had not taken the actual expenditure into consideration and had taken the provisional figures. It is contrary to the tariffs notified by the Board and condition 11 (C) of the tariffs. Hence, the demand so made by the Board based upon the wrong calculations is liable to be set aside.

The Board had filed counter-affidavit stating that the total quantity of 82,73,000 MT of Coal was consumed during the year 1993-94. The average increase in base prices/taxes and freight charges of Coal worked out to Rs.96.23 ps per Metric Ton. Similarly, due to increase in freight charges, the net average increase in price of Oil Ex-Storage Tanks of Board Thermal Stations worked out to Rs.15.16 lakhs. Thus, the total expenditure during the year 1993-94 due to increase of prices of Fuel (Coal and Oil) ex-Bunkers of Board Thermal Stations worked out to Rs.79.76 Crores. The Board incurred an additional expenditure of Rs.11.71 Crores over the Fuel Cost Adjustment provisionally, collected as per the tariffs, distributed

over 7553 million units and sold to HT & LT-III Consumers during the year 1993-94 resulting in levy of an additional Fuel Cost Adjustment Charges of Rs.1.55 Paise per unit. It is further stated that the petitioner in WP.No.3057 of 1995 paid the Fuel Cost Adjustment Charges of Rs.1,38,691/- through Challan, dated 23-02-1995.

Learned counsel for the petitioners contends that once the Board has not distributed the total quantity used and as the price worked out as per the annual accounts includes the taxes and freight charges, the same cannot be separately charged as stated in the counter affidavit. If the same is calculated as per the audit reports, it worked out to only 54 MT but not Rs.96.23 ps as claimed by the Board. Since the figures are not in dispute, this Court can always go into the correctness of the same and pass appropriate orders.

Sri N.Subba Reddy, learned senior counsel appearing for the respondents contends that the figures as published do not increase freight charges and if the same is added to the base price, the increase in cost of the Coal and Oil would be taken into consideration. Therefore, the figures arrived at are in accordance with the accepted formula. As the petitioner in W.P.No.3057 of 1995 paid the amount already, nothing survives to be adjudicated in the said writ petition. Though common reply is filed in WP.No.2994 of 1995, it is not stated that the provisional figures, which were sought to be depicted without issuing the actual calculations appended to B.P.Ms.No.644, dated 12-01-1995, are fabricated figures to suit the convenience of the Board and an attempt to defraud the consumers. It is not known by what method the actual increased costs per MT of Coal at Rs.96.23 ps was arrived at.

Having regard to the explanation offered by the Board that the freight charges, taxes payable on the entire coal supply and fuel amounts spent by the Board have to be taken into consideration for the increase of base price, the final adjustment of Fuel Cost appears to be reasonable calculation. Not only the base price but also the taxes and freight charges, which were incurred by the Board, have to be added to the actual amount spent by the Board for the cost of Coal and Oil.

In view of the same, no infirmity is discernible in increasing the price by adding the said cost to arrive at the actual amount spent by the Board for supply of Coal and Oil.

The Writ Petitions are accordingly dismissed. There shall be no order as to costs.

(A.GOPAL REDDY, J)

7th MARCH, 2006.

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